

STATE OF MICHIGAN  
COURT OF APPEALS

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AVERILL LEVITON,

Petitioner-Appellant,

v

NEW BUFFALO TOWNSHIP,

Respondent-Appellee.

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UNPUBLISHED

June 12, 2007

No. 267753

Tax Tribunal

LC No. 00-307896

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Tax Tribunal's December 20, 2005 judgment denying her a principal residence exemption for tax years 2001 through 2004. Because the record contains competent, material, and substantial evidence to support the tax tribunal's conclusion that petitioner failed to establish by a preponderance of the evidence that the subject property was her primary residence for the tax years at issue, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In 2000 and again in 2003, petitioner filed homestead exemption applications for two adjoining parcels of real property located in New Buffalo Township. In May 2004, the township tax assessor issued a Notice of Denial of Homeowner's Principal Residence Exemption concerning the subject property. Petitioner filed an appeal with the small claims division of the tax tribunal, that upheld the assessor's decision.

On appeal, petitioner asserts that the tax tribunal erred in finding she did not satisfy the requirements for the principal residence exemption under MCL 211.7cc. Specifically, petitioner contends that she owned and occupied the subject property at all relevant times. This Court has only limited authority to review a decision of the tax tribunal. *Stege v Dep't of Treasury*, 252 Mich App 183, 187-188; 651 NW2d 164 (2002).

In the absence of an allegation of fraud, this Court's review (...) is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record. [*Id.*, quoting *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000).]

Generally, when a statute levying a tax is ambiguous, we construe the statute against the taxing unit so as not to “extend the scope of tax laws by implication or forced construction.” *Stege, supra*, 188. But a statutory exemption is strictly construed against the property owner and in favor of the public. *Guardian Industries Corp v Dep’t of Treasury*, 243 Mich App 244, 249-250; 621 NW2d 450 (2000).

At issue in the instant case is the principal residence exception. MCL 211.7cc(1) provides in pertinent part:

A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under [MCL 380.1211] if an owner of that principal residence claims an exemption as provided in this section.

Further, MCL 211.7dd(c) defines “principal residence” as in relevant part

the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established.

A property owner may claim an exemption “by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located.” MCL 211.7cc(2). For purposes of the exemption, the term “owner” includes a person who is a partial owner or who owns the property as a result of being the beneficiary of a will or a trust. MCL 211.7dd. The affidavit must “state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed.” *Id.* Upon receipt of an affidavit, the assessor shall exempt the property “until December 31 of the year in which the property is transferred or is no longer a principal residence as defined in [MCL 211.7dd].” MCL 211.7cc(4).

However, under MCL 211.7cc(6),

[i]f the assessor of the local tax collecting unit believes that the property for which an exemption is claimed is not the principal residence of the owner claiming the exemption, the assessor may deny a new or existing claim by notifying the owner and the department of treasury in writing of the reason for the denial and advising the owner that the denial may be appealed to the residential and small claims division of the Michigan tax tribunal within 35 days after the date of the notice. . .

The taxpayer then bears the burden of establishing his entitlement to the exemption by a preponderance of the evidence. See *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002).

In the instant case, petitioner is correct in asserting that the record contains no evidence to contradict the homestead exemption affidavits stating that she owns the subject property. But regardless of ownership, there was evidence suggesting that petitioner did not occupy the

property as her principal residence during the tax years in question. Petitioner concedes that her husband's primary residence is in Illinois and that they filed joint federal income tax returns listing his address as their residence. Further, although petitioner submitted a check listing her address as that of the subject property, the bank statements for the corresponding checking account are sent to her at a Chicago address. While petitioner submitted numerous utility bills for the subject property, the tax tribunal noted that this was consistent with use of the property as a vacation home and did not establish it as petitioner's principal residence. The record contains competent, material, and substantial evidence to support the tax tribunal's conclusion that petitioner failed to establish by a preponderance of the evidence that the subject property was her primary residence for the tax years at issue. Its factual findings in this regard are therefore conclusive. *Stege, supra*, 188. Consequently, the tax tribunal did not err in denying petitioner a principal residence exemption for the subject property for tax years 2001 through 2004.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio